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IN THE

Supreme Court of the United States

October Term, 1956

No. 753

HUGH H. BRIDGFORD,

Petitioner,

vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy for the Estate of The Bridgford Company, a Corporation, Bankrupt,

Respondent.

Petition for Writ of Certiorari to United States Court of Appeals for the Ninth Circuit.

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Respondent.

Petition for Writ of Certiorari to United States Court of Appeals for the Ninth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Ninth Circuit entered October 3, 1956, reversing the judgment of the United States District Court for the Southern District of California, Southern Division, entered August 20, 1954 and May 23, 1955.

Opinions Below.

The Memorandum Opinion of the District Court Modifying Order of Referee filed July 14, 1954 is not reported. [R. 136; Appendix, p. 1.] The opinion of the Court of Appeals for the Ninth Circuit filed October 3, 1956, (Appendix, p. 4) is reported at 237 F. 2d 182.

Grounds on Which Jurisdiction Is Invoked.

The date of the Judgment sought to be reviewed and the date of its entry are October 3, 1956. (Appendix, p. 14.)

The date of the Order Denying Petition for Rehearing is November 13, 1956. (Appendix, p. 15.)

No order granting an extension of time within which to petition for certiorari was made.

The statutory provision believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari is the United States Code, Title 28, Section 1254(1).

Questions Presented for Review.

1.

The fundamental question presented in this petition is whether the donee of Certificates of Indebtedness of a Debtor-in-Possession which were given priority in payment over existing obligations of the debtor, acquired by the donor, a fiduciary, for full consideration, must be precluded from participation in the distribution of the assets of the bankrupt, merely because the donee was also a fiduciary of the bankrupt.

II.

A question in this petition is also whether fundamental constitutional rights and privileges under the Fifth Amendment of the Constitution of the United States of both the donor and donee in respect to said Certificates of Indebtedness have been abridged by the decision of the United States Court of Appeals for the Ninth Circuit.

Statement of the Case.

The material facts in chronological order are as follows:

1. On April 25, 1947, a petition under Chapter XI of the Bankruptcy Act was filed by The Bridgford Company. [R. 3.]

2. On said date of April 25, 1947, and prior thereto, petitioner was the president, director and principal shareholder of The Bridgford Company. [R. 177.] At no time after the filing of said petition did petitioner as such president, director or principal shareholder have any connection with or control of the business affairs of The Bridgford Company.

3. On April 25, 1947, the District Court, through one of its Referees in Bankruptcy, assumed control of the assets of The Bridgford Company, appointed M. E. Wagenheim as General Manager of the company, and, through said General Manager, thereafter controlled and conducted the business and affairs of said company continuously until November 6, 1947. [R. 16.]

On February 26, 1948, the said Referee in Bankruptcy by his order approved the Plan of Arrangement for the company and directed that the company "shall take over its business and assets and operate such business without Court control." [R. 26.] At that time one R. H. Hadley was the Chairman of the Board of Directors and principal

shareholder of the company and he operated and controlled the company, free of court control, continuously from February 26, 1948 until November 24, 1948. [R. 197.]

6. On November 28, 1947 and again on January 23, 1948, the said Referee in Bankruptcy signed orders authorizing the issuance by The Bridgford Company of not to exceed 46 Certificates of Indebtedness for $5,000.00 each. [R. 19 and 23.] All of these certificates were issued to Mr. R. H. Hadley for cash in the face amount of the certificates loaned by him to the company. [R. 169-170.] At the time both of said orders were made Mr. Hadley was General Manager of the company by appointment of the District Court and was operating the company's affairs under the Court's control. [R. 187.] These certificates, pursuant to the terms thereof, were given priority. [R. 22.] All of these certificates were subsequently repaid by the company except certificates Nos. 35 to 40, both inclusive, which are the basis of petitioner's claim and are the subject matter of the appeal. At this time there is unpaid the face amount of said certificates aggregating $30,000.00 plus interest against which respondent has an offset of approximately $10,996.40.

7. During the period that Mr. Hadley was operating the company free of court control, to-wit from February 26, 1948 to November 24, 1948, the company incurred debts which respondent asserts should be prior to petitioner's claim on said certificates of indebtedness. [R. 197.]

8. On November 24, 1948, on petition of the company, the court resumed control of the company, its business and assets, and appointed petitioner as General Manager, later adding two Co-General Managers. [R. 177-178.] The Court retained control of the company

through said general managers continuously thereafter, until the adjudication in bankruptcy on November 8, 1949. [R. 65.]

9. On November 4, 1949, said certificates Nos. 35 to 40, both inclusive, were transferred and assigned by Mr. Hadley to petitioner as a gift. [R. 140 and 166.]

10. On February 13, 1953, petitioner filed herein his claim on said certificates Nos. 35 to 40, both inclusive, in the amount of their face value, *i.e.,* $30,000.00 plus interest. [R. 96.]

11. On November 13, 1953, the Referee in Bankruptcy allowed said claim of petitioner but subordinated it to the payment of all other claims. [R. 118.]

12. By orders of District Judge Ben Harrison on August 20, 1954 and May 23, 1955, said order of the Referee was modified and petitioner's claim was held to be prior over general creditors' claims and subordinate to expenses of administration and court costs. [R. 138 and 148.]

13. On October 3, 1956, the Court of Appeals for the Ninth Circuit reversed the judgment of the District Court, and precluded any recovery by petitioner because he obtained the certificates by gift, and on November 13, 1956 denied a petition for rehearing.

The United States District Court for the Southern District of California, Southern Division, had jurisdiction by virtue of the provisions of Section 2-a, Subdivision 1 of the Bankruptcy Act. (11 U. S. C., Sec. 11(a).)

The United States Court of Appeals for the Ninth Circuit had jurisdiction of the appeal by virtue of Section 25-a of the Bankruptcy Act. (11 U. S. C., Sec. 47(a).)

REASONS RELIED UPON FOR ALLOWANCE OF WRIT OF CERTIORARI.

I.

The Court of Appeals for the Ninth Circuit Has so Far Departed From the Accepted and Usual Course of Judicial Proceedings, as to Call for an Exercise of This Court's Power of Supervision.

The certificates in question under court order and for full consideration were issued to Hadley, who was the Court's appointed manager. They were retained by Hadley to November 4, 1949 on which date he made a gift of them to this petitioner. On that date petitioner herein was a court appointed manager and Hadley was Chairman of the Board, a Director and the principal shareholder of the Company. Hadley is not complaining. The Court of Appeals for the Ninth Circuit reversed the judgment of the District Court, granting priority payment according to the tenure of the certificates, holding that petitioner herein is precluded from collecting more than he paid for a claim against an insolvent to which he owed a fiduciary duty. We submit in so doing, the Court of Appeals for the Ninth Circuit so far departed from the usual course of judicial proceedings, as to call for an exercise of this court's power of supervision. If petitioner had been "trafficking" in such certificates by buying the same at a discount, there would be reason to support the decision of the Court of Appeals for the Ninth Circuit. If these certificates of Indebtedness had been given to influence petitioner in his fiduciary capacity to take some wrongful act there would also be reason for

such decision. Such, however, was not the case. There was no "trafficking." Trafficking denotes a barter or sale transaction. Webster's New Twentieth Century Dictionary (1954) among other definitions defines traffic: to trade; to pass goods and commodities from one person to another for an equivalent in goods or money; to barter; to buy and sell wares; to carry on commerce. This, however, was a gift. A gift is the antithesis of trafficking. Let us suppose that instead of petitioner and Hadley a husband and wife were involved and that the husband occupied Hadley's position and his wife occupied petitioner's position. Could it be said that the wife could not recover, simply because the husband had given her the certificates? The decision of the Ninth Circuit would, however, preclude such recovery. Constitutionally, and among the inalienable rights of man, zealously guarded by this Court, is the right of acquiring, possessing and protecting property which includes the right to dispose of property. Under the police power, of course, that right can be curtailed within reasonable limits when public good requires such curtailment.

It would seem that the decision of the Ninth Circuit is an unreasonable encroachment on the right of a man to give his property to those whom he desires to be the recipients of his bounty, and there is no justification under the facts of this case to justify the frustration of the rights of both the donor and the donee.

The Court of Appeals for the Ninth Circuit made much of the fact that Bridgford, petitioner herein, pur-

suant to the order of the Referee made payment to himself on said Certificates of Indebtedness while he was a co-manager. [R. 63.] This should be immaterial. He was later ordered to repay these monies and is in compliance with said order as thereafter amended. [R. 143.] As Judge Harrison, the District Judge States [R. 137; Appendix, pp. 1 and 2]:

> "Any possible misuse of his position by virtue of the fact that he obtained payment for these Certificates with knowledge that the Debtor was about to be adjudicated a bankrupt, was erased by order of the Referee requiring him to pay back the money so obtained."

The Referee did not feel that the payment of November 7, 1949, precluded Mr. Bridgford from asserting a claim of priority at the proper time. The Referee in his Order of January 16, 1953 [R. 95], stated in part:

> "It is further ordered that the Findings of Fact and Conclusions of Law and Order heretofore made herein, dated November 17, 1952, are and were made without prejudice to the right of the said Hugh H. Bridgford to claim and assert a priority status and a preference for said claims on said Certificates of Indebtedness."

In this proceeding Bridgford, petitioner herein, is seeking only to obtain what Hadley would have been entitled to receive. The creditors should have no right to complain. On the other hand, the decision of the Court of Appeals for the Ninth Circuit produces a gift or a windfall to the general creditors and in reality takes property

without due process of law. As Judge Harrison, the District Judge, said:

> "Petitioner has succeeded to the position of his assignor (Hadley) and the fact that he himself gave no consideration for these Certificates is not material. Petitioner himself did nothing to detract from the position given to him by his assignor. His duty as a court appointed officer is not violated when he seeks to realize on rights to which he is entitled by valid order of that court." [R. 137; Appendix, p. 1.]

Judge Harrison's conclusion of law covers this point as follows:

> "That Petitioner although occupying the position of a fiduciary as to the Bankrupt when he acquired these Certificates, did nothing to detract from the position given to him by H. H. Hadley, his assignor, also a fiduciary as to the Bankrupt, and therefore, Petitioner's fiduciary position, as aforesaid, does not in any way detract from the rights he might have otherwise had with reference to said Certificates if he had not occupied said fiduciary position." [R. 141.]

As further stated by Judge Harrison:

> "Under these circumstances the position to be afforded his claim was to be determined solely by the position which the court gave to the Certificates at the time they were issued. The position so given these Certificates, was to be one of priority over existing claims and the integrity of the Certificates and thus this position is to be maintained." [R. 137; Appendix, p. 2.]

II.

The Court of Appeals for the Ninth Circuit Has Decided an Important Question of Federal Law Which Has Not Been, but Should Be Settled by This Court.

The Court of Appeals in this case has decided that the holder of Certificates issued by debtor corporation, later a bankrupt, is precluded from recovering on such Certificates where he has acquired those Certificates by gift from another and both the donor and the donee occupied fiduciary relation to the corporation. This is an important question pertaining to reorganization proceedings under the Federal Bankruptcy Law, bankruptcies, and general receivership proceedings involving insolvency. So far as we are able to ascertain this Court has not passed upon this question. We believe the matter has been touched upon, and then indirectly, in one court, viz., in the case cited by the Court of Appeals for the Ninth Circuit in its decision *Bramblet v. Commonwealth Land & Lumber Co.*, 26 Ky. Law. Rep. 1176, 1179, 83 S. W. 599, 602, mod. on other grounds, 27 Ky. Law. Rep. 156, 84 S. W. 545 (1904). However, whatever was said on the point in that case was dictum, as examination of that case shows that there was a trafficking and not a gift situation. If the decision of the Court of Appeals for the Ninth Circuit is allowed to stand, it is to be expected that in case after case, where gifts are involved, claims filed in bankruptcy, receivership and insolvency proceedings will be challenged.

Wherefore, your petitioner prays that a writ of certiorari may issue under the seal of this Court, directed to the United States Court of Appeals for the Ninth Circuit, to the end that this case may be reviewed and determined by this Court as provided by law, and that the judgment of the said court may be reversed by this Honorable Court, and the judgment of the United States District Court affirmed, and that this petitioner may have such other and further relief as may seem meet and proper.

Respectfully submitted,

KYLE Z. GRAINGER,

Attorney for Petitioner.

Certificate of Counsel.

I, KYLE Z. GRAINGER, a member of the bar of this Court, hereby certify that I believe the foregoing Petition for Writ of Certiorari is well founded and meritorious, and is not interposed for the purpose of delay.

KYLE Z. GRAINGER.

APPENDIX A.

Memorandum Opinion Modifying Order of Referee.

This is a petition for review of an order of the referee in bankruptcy, which order allowed petitioner's claim against the bankrupt but subordinated it to the payment of all other claims. Petitioner's claim arises by virtue of the ownership by him of certain debtor's certificates which by their terms and the terms of the order under which they were authorized call for priority over all existing claims against the debtor, except valid liens and administration expenses. The referee's reasons for subordinating this claim are that since petitioner himself gave no consideration for the certificates and occupied the position of a fiduciary as to the debtor at the time he attempted to realize on them, he should not be entitled to the position of priority which they would otherwise afford.

The referee was in error. Petitioner received these certificates by way of assignment from one who gave consideration for them and who while also in a fiduciary position as to the debtor at no time violated any of the duties of that position. Petitioner has succeeded to [181] the position of his assignor and the fact that he himself gave no consideration for these certificates is not material. Petitioner himself did nothing to detract from the position given to him by his assignor. His duty as a court appointed officer is not violated when he seeks to realize on rights to which he is entitled by valid order of that court. Any possible misuse of his position

by virtue of the fact that he obtained payment for these certificates with knowledge that the debtor was about to be adjudicated a bankrupt was erased by the order of the referee requiring him to pay back the money so obtained.

Under these circumstances the position to be afforded his claim was to be determined solely by the position which the court gave to the certificates at the time they were issued. The position so given these certificates was to be one of priority over existing claims and the integrity of the certificates and thus this position is to be maintained. [See Kneeland vs. Luce, 141 U. S. 491 at p. 508 (1891); Ball vs. Improved Property Holding Co., 247 F. 645 (2nd Cir., 1917)]. Contrary to the position of petitioner, however, on this review this means that priority was to extend only to claims existing at the time the certificates were issued and not as to claims arising after that time.

Therefore, the referee's order now being reviewed should be so modified as to give petitioner's claim a priority status as to all other claims, excepting valid liens and administration expenses, existing at the time the certificates in question were issued. While petitioner's claim is not entitled to priority over claims arising after that date, there is no valid reason why it should be subordinated to such claims and the referee's order should also be modified so as to place it on a position of parity with such future claims, excepting of course claims for administration expenses and claims which for other reasons should be superior to it, if any of these exist.

In order to avoid circuity and possible hardship, the amount still due the trustee under the order of repayment shall be [182] set-off as against any dividends to which petitioner will become entitled under the instant order.

Petitioner is directed to submit appropriate order in accordance with the views herein expressed.

Dated: This 14 day of July, 1954.

/s/ BEN HARRISON,
Judge [183]

[Endorsed]: Filed July 14, 1954.

APPENDIX B.

Opinion of the United States Court of Appeals for the Ninth District.

In the Matter of The Bridgford Company, a corporation, Bankrupt. Paul W. Sampsell, Trustee in Bankruptcy for the Estate of The Bridgford Company, a Corporation, Bankrupt, Appellant, vs. Hugh H. Bridgford, Appellee. No. 14,880, Oct. 3, 1956.

Appeal from the United States District Court for the Southern District of California.

Before: HEALY and FEE, Circuit Judges, and SOLOMON, District Judge.

SOLOMON, District Judge:

On April 25, 1947, the Bridgford Company, hereafter called debtor, of which appellee Bridgford was president, a director, and principal stockholder, filed a voluntary petition for an arrangement under Chapter XI of the National Bankruptcy Act. 52 Stat. 906, 11 U. S. C. A. §70, *et seq.*

The plan of arrangement, which provided for the debtor remaining in possession of its assets, was confirmed by the referee, who on November 6, 1947, appointed R. H. Hadley as general manager of the debtor to manage and conduct its affairs.

Thereafter, the referee authorized the debtor to issue certificates of indebtedness to raise working capital and to pay such priority claims and expenses of administration as the court allowed. Each certificate was to be in the amount of $5,000.00, bear interest at 5 per cent per annum, and become due one year after date of issue.

These certificates were to have priority over all existing obligations except valid liens upon the assets of the debtor and expenses of administration.

On February 2, 1948, R. H. Hadley purchased six certificates for $30,000.00.

On November 26, 1948, the court appointed Bridgford manager of the debtor, and two months later the court appointed two additional co-managers to serve with him.

The debtor defaulted under the plan of arrangement, and creditors filed a petition requesting that it be adjudicated a bankrupt. On Friday, November 4, 1949, the referee held a hearing on the creditors' petition, and at the conclusion of the hearing, in the presence of Bridgford, announced his decision to adjudicate the debtor a bankrupt.

Later that day, Bridgford contacted Hadley, who was about to enter the hospital, and obtained from Hadley, without consideration, the six certificates of indebtedness. Hadley testified:

> "Q. What was said by you at that time relative to the assignment of these indebtedness certificates?
>
> "A. Well, we just discussed the matter that I hadn't been able to collect on them, and I was going to the hospital, and if anything was going to be gotten out of them I assigned them to Bridgford without any benefit to myself in any way, shape or form, with the hopes that if he did get anything out of them it would be used for the benefit of those who put money into the business, and that is the only discussion we had about it. So far as my receiving anything, I just gave him the assignment of the certificates.
>
> * * * *

"Q. Do I understand you to say you received no consideration for the assignment of those certificates?

"A. That's right. As a matter of fact, I had charged them off on my income tax return, and I explained to you, Mr. Oakes, that day that all I wanted was proof of the fact that I received no value. Do you remember our discussing that?

* * * *

"Q. Was there any understanding of any kind or character between you and Mr. Bridgford at that time that you were to participate in any recoveries that should be made on those certificates?

"A. Nothing was to be for me, no, sir.

"Q. I understood you to say something about that you wanted any recoveries to be used—

"A. I hoped if any recovery was made it would be used for the benefit of those who invested the money in the company, but I assigned the certificates without any consideration whatsoever. Correct me if I am wrong."

At that time, Bridgford and his co-managers had in their possession $43,282.33 in cash belonging to the debtor. On the following Monday, before the order adjudicating the debtor a bankrupt was entered, Bridgford and a co-manager petitioned the referee for authority to disburse all but $60.12 of these funds. The following item was among those listed in the petition:

"10. To H. H. Bridgford, payment on account of principal and interest on Certificates of Indebtedness of Petitioner, Nos. 35 to 40, inclusive (total principal due $30,000; total interest due $2,580) ..... 25,996.40"

On the same day, the referee in an *ex parte* proceeding ordered the funds disbursed in accordance with the prayer of the petition.

On the following day, the order adjudicating the debtor a bankrupt was entered by the referee. Thereafter, Paul W. Sampsell, as trustee in bankruptcy of the debtor, petitioned the referee to set aside or modify his order of November 7, 1949, relating to the payment made to Bridgford. As a result of this petition and the hearings held thereon, the referee discovered that Bridgford had acquired the six certificates without paying any consideration. He also learned that the debtor owed to a number of creditors, including a group of Oregon farmers, a sum in excess of $100,000.00, which debts were created subsequent to the issuance of the certificates.

The referee allowed appellee's claim of $30,000.00, the face value of the six certificates, but he ordered the claims subordinated to the payment of all claims as well as to all costs of administration. He found that the appellee "was guilty of overreaching and his acts were unfair to other creditors to whom the said debtor corporation was and is indebted, and that it would be unjust, unfair and inequitable to permit the said claimant to participate in the distribution of the remaining assets of the bankrupt until all other claims and indebtedness and costs and expenses of administration shall have been paid in full."

He further found that Bridgford had violated his fiduciary duty to the debtor by paying himself $25,996.40 on account of the six debtor's certificates which he had acquired without consideration. The referee ordered Bridgford, who had used a portion of the money to pay personal bills and who had co-mingled the balance with

his own funds, to forthwith repay the full amount so received to Sampsell as trustee in bankruptcy.

On a review of the referee's order, the District Court concluded that Bridgford's rights depended upon the priority status of the certificates at the time they were issued. Although Bridgford acquired the certificates without cost, he stood in the shoes of his assignor, who had given value for them. Since his assignor would have had priority, Bridgford was entitled to the same priority. On the basis of this reasoning, the District Court entered an order which in effect approved the original payments to Bridgford.

The trustee in bankruptcy in his appeal contends that the District Court erred in granting a priority payment to an officer, director and court-appointed manager of an insolvent corporation, who, without paying any consideration therefor, acquired a claim against the corporation on the eve of its bankruptcy.

We agree.

Mr. Justice Cardozo, in the case of Meinhard v. Salmon, 249 N. Y. 458, 464, 164 N. E. 545, 546, set forth the rigid standard imposed upon fiduciaries:

> "Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioner to undermine the rule of undivided

loyalty by the 'disintegrating erosion' of particular exceptions. * * * Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court."

The late Judge Ralph E. Jenney, in the case of *In Re* Los Angeles Lumber Products Co. (D.C. S.D. Cal. C.D. 1941), 46 F. Supp. 77, approved this strict standard. In that case a director, officer and attorney for an insolvent corporation undergoing reorganization under Section 77B of the Bankruptcy Act purchased bonds of the corporation on the open market and from private sources at their going market price. This price, however, was substantially lower than their par value. After the plan of reorganization was confirmed, he filed a claim for the par value of the bonds. Upon objection, his recovery was limited to the amount actually paid for the bonds plus interest. He was so limited in spite of the fact that Judge Jenney found that the purchases were made openly, in good faith, and with good intentions, and that the corporation was not in the market to purchase the bonds and had no funds with which to make such purchases.

Judge Jenney, in his much-cited opinion, made a careful and exhaustive examination of the authorities relating to the duties of fiduciaries. The following excerpt is particularly applicable here:

"From these references it will be seen that the rules laid down by the courts are designed 'to provide against any possible selfish interest exercising an influence which can interfere with the faithful discharge of duty which is owing in a fiduciary capacity' (Magruder v. Drury, 235 U. S. 106, 119,

35 S. Ct. 77, 82, 59 L. Ed. 151) and these rules have long been strictly enforced (Michoud v. Girod, 45 U. S. 503, 4 How. 503, 557, 11 L. Ed. 1076), and they are required 'because of the demonstrated fallibility of mankind'. (Loring, A Trustee's Handbook, Shattuck Revision, p. 66.)

"It has, of course, long been established that officers, directors and attorneys of a corporation are fiduciaries and that they should be held responsible for any breach of duties as such. They may not, while the corporation is insolvent, purchase claims against it at a discount and then enforce such claims at their full face value. Bonney v. Tilley, 1895, 109 Cal. 346, 42 P. 439; Davis v. Rock Creek Lumber, etc., Co., 1880, 55 Cal. 359, 36 Am. Rep. 40. When the corporation is not insolvent but has filed its petition under Section 77B or Chapter X of the National Bankruptcy Act as amended, 11 U. S. C. A. §501 *et seq.*, and the directors have become trustees of the debtor in possession, the directors' obligations as trustees become even more rigorous. *In re* Norcor Mfg. Co., 7 Cir., 109 F. 2d 407; Pepper v. Litton, 308 U. S. 295, 60 S. Ct. 238, 84 L. Ed. 281." (At page 88.)

Recently, this court reaffirmed its adherence to the well-established policy of the law which imposes upon fiduciaries the highest standards of conduct. Donovan & Schuenke v. Sampsell, 9 Cir. 1955, 226 F. 2d 804. The court there declared void and set aside a purchase of real property at a trustee's sale because the purchaser was the former president of a bankrupt corporation and had acted as a fiduciary with respect to the particular property.

Judge James Alger Fee, speaking for the court, stated:

> "Fiduciary obligations are imposed upon corporate officers of a concern which is insolvent. They cannot buy claims against it, deal in its stock or traffic in its property. The courts refuse profit on or set aside such transactions even where bankruptcy has not intervened.
>
> "* * * And the intervention of bankruptcy does not terminate his responsibility as an officer of the corporation. Even if the relationship had ended, the fiduciary capacity was not lost." (At page 807.)

Bridgford does not question the correctness of these principles of law, but he contends they are not applicable to him because: (1) he acquired the certificates from a fiduciary who would have been entitled to enforce them; (2) no one to whom he owed a fiduciary duty was harmed or affected by his acquisition of the certificates; and (3) he did not traffic in these certificates because he acquired them as a gift and it involved one rather than a series of transactions.

There is no merit to any of these contentions.

A fiduciary may not relieve himself of his responsibilities to his trust merely because he acquired the claim from a person who likewise occupied a fiduciary relationship to the same trust. Each fiduciary owes an independent obligation to his trust, and he cannot use his position for his personal benefit rather than for the benefit of his trust.

The vice of Bridgford's conduct was that he used a corporate opportunity for his personal gain. As a fiduciary, he should not have taken the certificates unless he accepted them on behalf of the corporation.

Furthermore, by taking these certificates in his private capacity, Bridgford violated the rule prohibiting fiduciaries from acquiring private interests which conflict with their duty to their trust. Donovan & Schuenke v. Sampsell, *supra*.

The wisdom of this rule is well illustrated by the present case. Here a $30,000.00 claim against an insolvent corporation was solicited and acquired from the owner by a fiduciary without cost. The claim, which on a Friday was worthless in the hands of the owner, yielded the fiduciary almost $26,000.00 on the following Monday while creditors to whom more than $100,000.00 was due were left with $60.12.

Bridgford's arguments that no one suffered from his acquisition of the certificates and that he was not "trafficking" in them because he obtained them by gift were succinctly answered in Bramblet v. Commonwealth Land & Lumber Co., 26 Ky. Law Rep. 1176, 1179, 83 S. W. 599, 602, mod. on other grounds 27 Ky. Law. Rep. 156, 84 S. W. 545 (1904):

> "* * * To the argument that it does not matter to the corporation who owns its debts, so it honestly owes them, and that it is immaterial to it whether its president gets them for nothing, as it does not have to pay any more than it actually owes in any event, the answer is, it does matter, for human nature is not so constituted that the same person can fairly represent opposing sides of the same question—cannot be both creditor and debtor. * * * The policy of the law is to insure fidelity of trustee to their trusts by making it impossible for them to profitably neglect or abuse them."

To the argument that he did it only once, we believe that the high standards imposed upon fiduciaries did not permit Bridgford even "one bite."

There is no need to consider the priority status of the claims of the Oregon farmers nor the status of the certificates had they been retained by Hadley for, as we have pointed out, Bridgford is precluded from collecting more than he paid for a claim against an insolvent corporation to which he owed a fiduciary duty.

Reversed and remanded with instructions to enter a judgment in accordance with this opinion.

(Endorsed): Opinion. Filed, Oct. 3, 1956.

Paul P. O'Brien, Clerk.

APPENDIX C.

Judgment.

United States Court of Appeals for the Ninth Circuit.

In the Matter of The Bridgford Company, a corporation, Bankrupt, Paul S. Sampsell, Trustee in Bankruptcy for the Estate of The Bridgford Company, a Corporation, Bankrupt, Appellant, vs. Hugh H. Bridgford, Appellee. No. 14880.

Appeal from the United States District Court for the Southern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the order of the said District Court in this cause be, and hereby is reversed, with costs in favor of the Appellant, and against the Appellee, and that this cause be, and hereby is remanded to the said District Court with instructions to enter a judgment in accordance with the opinion of this Court.

IT IS FURTHER ORDERED and adjudged by this Court, that the Appellant recover against the Appellee for his costs herein expended and have execution therefor.

(ENDORSED) Judgment
Filed and Entered: October 3, 1956

PAUL P. O'BRIEN, Clerk.

APPENDIX D.

Order Denying Petition for Rehearing.

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Tuesday, November 13, 956.

Before: HEALY and FEE, Circuit Judges, and SOLO-MON, District Judge.

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellee, filed November 7, 1956, and within time allowed therefor by rule of Court, and valid extension thereof, for a rehearing of the above cause be, and hereby is denied.

SUBJECT INDEX

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STATUTE

National Bankruptcy Act, Chap. XI, Sec. 442 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. .....

HUGH H. BRIDGFORD,

Petitioner,

vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy for the Estate of THE BRIDGFORD COMPANY, a Corporation, Bankrupt,

Respondent.

Respondent's Brief on Objection to Petition for Writ of Certiorari.

The respondent respectfully submits that this petition for writ of certiorari should be denied.

The petitioner was a debtor-in-possession under the provisions of Section 442 of Chapter XI of the National Bankruptcy Act which vests the debtor-in-possession with all the rights and title of a trustee in bankruptcy, and likewise subjects him to all of the duties of such trustee.

The two grounds relied upon by the petitioner are that the Court of Appeals for the Ninth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power

of supervision, and, secondly, that the Court of Appeals for the Ninth Circuit has decided an important question of federal law which has not been, but should be settled by this court.

We respectfully submit that neither of these propositions are true. The Court of Appeals for the Ninth Circuit, in reversing the case at bar, based its decision largely on the recent case of *Donovan & Schuenke v. Sampsell,* 226 F. 2d 804. That case in turn followed the decision of this court in the case of *Mosser v. Darrow,* 341 U. S. 267, 271-272, and the case of *Pepper v. Litton,* 308 U. S. 295, both of which cases are substantially quoted from in *Donovan & Schuenke, et al. v. Sampsell,* 226 F. 2d 804 at 809 and 810.

The case at bar is doubly odious by reason of the fact that the petitioner Bridgford was not only an officer and director of the debtor corporation, but was a fiduciary under Chapter X, appointed by the court. While acting in such fiduciary capacity he obtained the debtor's certificates in question for his own use and benefit without paying the original holder a single dollar therefor. Furthermore, he hastily saw to it that he himself was paid in full after the Referee in Bankruptcy had announced that he was going to terminate the Chapter X proceeding and adjudicate The Bridgford Company to be a bankrupt. Naturally, it took a couple of days to prepare the formal order of adjudication, and during that time this fiduciary, Bridgford, feathered his own nest leaving only the sum of $60.12 for the trustee who succeeded him to pay the

claims incurred during the period when he was acting as debtor-in-possession. He did not inform either the Referee or the creditors of the fact that he acquired these debtor's certificates without any consideration whatsoever.

We respectfully submit that the Ninth Circuit rigidly followed the rules laid down by this court in *Pepper v. Litton* and *Mosser v. Darrow,* heretofore cited. There is no conflict between the circuits and the writ of certiorari should be denied.

Respectfully submitted this 8th day of February, 1957.

THOMAS S. TOBIN,

Attorney for Respondent.

FRANK C. WELLER,

HUBERT F. LAUGHARN,

IN THE

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OCTOBER TERM, 1956

No. .....

HUGH H. BRIDGFORD,

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vs.

PAUL W. SAMPSELL, Trustee in Bankruptcy for the Estate of THE BRIDGFORD COMPANY, a Corporation, Bankrupt,

Respondent.

Praecipe for Appearance of Counsel for Respondents in Resistance to Petition for Writ of Certiorari.

To the Clerk of the Above-named Court:

You will please enter the appearance of the undersigned as Attorney for the proposed respondent, Paul W. Sampsell, as trustee in bankruptcy in the above-entitled matter.

Dated: February 8th, 1957.

THOMAS S. TOBIN,

Attorney for Respondent.